

Appendix 1B

Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG THE CORPS OF ENGINEERS, BUREAU OF RECLAMATION,
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING
IMPLEMENTATION OF THE AMERICAN RIVER WATERSHED PROJECT**

WHEREAS, the Corps of Engineers (COE) and Bureau of Reclamation (BOR) have determined that implementation of the American River Watershed Project (Project) may affect historic properties included in or eligible for inclusion in the National Register of Historic Places, and have consulted the California State Historic Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to Section 800.13 of the Council's regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the American River Watershed Project will provide flood protection and other benefits to the greater Sacramento area and will potentially affect areas within the project construction and operation zones, as well as downstream areas within the American River Flood Plain, where future development may occur as a consequence of the Project (Attachment 1); and

WHEREAS, the Project may be modified based on public input, congressional authorization, and ongoing negotiations among the primary sponsors (COE, BOR, The Reclamation Board and the Sacramento Area Flood Control Agency) and

WHEREAS, the scope and magnitude of effects to historic properties have not yet been determined because identification and evaluation studies remain to be completed within the area of potential effects (APE); and

WHEREAS, the parties to this agreement recognize that long-term management procedures will be needed to account for the potential development of areas that will be afforded new or increased flood protection as a result of Project implementation; and

WHEREAS, the definitions listed in 36 CFR Part 800.2 are applicable throughout this PA;

WHEREAS, The Reclamation Board of the State of California and the Sacramento Area Flood Control Agency (SAFCA) were consulted and have been invited to concur in this Programmatic Agreement; and,

NOW, THEREFORE, the COE, BOR, California SHPO, Council, The Reclamation Board and SAFCA agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account any effects of the undertaking on historic properties. The COE is the designated lead (DL) Federal agency for the purposes of implementing this agreement, with the BOR as a cooperating Federal agency, and The Reclamation Board and SAFCA as the cooperating non-Federal sponsors.

STIPULATIONS

The designated lead federal agency will ensure that the following measures are carried out:

1. DEFINITION OF PROJECT AND ASSIGNMENT OF RESPONSIBILITY

As currently configured, the Project consists of the 200-Year Protection Alternative defined in the COE's Draft Feasibility Report and Joint EIS/EIR for the American River Watershed Investigation, California (April 5, 1991). This alternative includes construction of a 545,000 acre foot flood control dam at Auburn, raising or constructing levees in the Natomas area, relocation of portions of State Highway 49, and raising or replacing bridges.

A. If the nature of the Project changes, the DL will consult with the SHPO, The Reclamation Board, SAFCA, and the BOR in a timely manner to determine the need for modification of the APE and scope of historic property identification, evaluation, and treatment measures defined in Stipulations 2-4 below. If agreement cannot be reached about the scope of these modifications, the COE shall consult the Council pursuant to Stipulation 10 prior to making an irreversible commitment to such changes.

B. In the event that a change in the DL is proposed, the COE will immediately notify the other parties to this agreement. The DL will request an amendment to the PA if changes in the DL becomes necessary because of congressional authorization.

2. INVENTORY OF HISTORIC PROPERTIES

The DL will consult with the SHPO and the cooperating Federal agency to review historic property identification studies already conducted in the Project's APE and determine the scope and extent of further actions needed to complete the inventory. The DL shall then ensure that necessary actions are taken to complete the historic property inventory of the APE in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification (48 FR 44720-23), the National Park Service publication The Archaeological Survey: Methods and Uses (1978: GPO Stock No. 024-016-00091), and guidance offered by the SHPO.

The DL will ensure that archaeological properties identified during the inventory are recorded or updated on California Department of Parks and Recreation (DPR) Form 422 in accordance with the Office of Historic Preservation's (OHP's) California Archaeological Inventory Handbook for Completing an Archaeological Site Record (March 1989), and that those forms have been submitted to and permanent site numbers have been assigned by the appropriate Information Center of the California Archaeological Inventory prior to submission of inventory reports for review. Historic resources

located during the inventory shall be recorded on DPR Form 523 in accordance with the OHP's Instructions for Completing California Historic Resources Inventory Forms (March 1984).

The DL shall ensure that all inventory and survey reports are prepared and circulated for review in accordance with the provisions contained in Stipulation 5 prior to taking any actions that might affect historic properties.

3. HISTORIC PROPERTY EVALUATION

The DL will consult with SHPO and the cooperating Federal agency to determine the scope and timing of the studies needed for purposes of evaluating the National Register eligibility of cultural resources in the Project's APE prior to initiating any activities that might affect historic properties. Where adequate provisions can be designed to ensure that cultural resources will not be affected, no evaluation will be required.

The DL will ensure that all cultural resources which will be affected by the Project are evaluated to determine their eligibility for inclusion in the National Register in consultation with the SHPO and the cooperating Federal agency, taking into account the Secretary of the Interior's Standards and Guidelines for Evaluation (48 FR 190:44729-44738), National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation (1991), Guidelines for Archeological Research Designs (Office of Historic Preservation 1991), and other guidance offered by the SHPO. All evaluations will be directed by a research design and plans developed by the DL in consultation with other parties to this agreement.

Once evaluative excavations have been initiated at those archaeological sites determined to require excavation by the DL, in consultation with other parties to this agreement, the DL will ensure that recovered materials are fully analyzed according to the research design and plan that was prepared to guide the excavation. Changes in the Project will not relieve the DL of the responsibility to ensure completion of individual resource evaluations once materials have been removed from an archaeological site.

By mutual agreement among the COE, BOR, and SHPO, evaluative studies may be phased. The DL shall ensure that the evaluative study or studies are prepared and submitted for review according to the provisions of Stipulation 5. No further consideration need be given to properties that the DL, SHPO, and cooperating Federal agency agree are not eligible. If an evaluation results in the identification of a property or properties that the DL, SHPO, and cooperating Federal agency agree are eligible for the National Register, the DL shall ensure that they are treated in accordance with Stipulation 4.

4. HISTORIC PROPERTY TREATMENT PLAN(S) (HPTPs):

The DL will consult with the SHPO, Council, The Reclamation Board, and the cooperating Federal agency to develop a mutually acceptable HPTP or HPTPs for all National Register eligible and listed properties in the Project's APE. Separate HPTPs may be prepared for individual components of the Project if agreed to in advance by the SHPO, COE, BOR, and The Reclamation Board. Each HPTP will be submitted SHPO and Council for review according to the procedures defined in Stipulation 5. Following its acceptance by the reviewing parties, the DL will ensure that the HPTP is implemented.

Each HPTP will take into account the principles, standards, and guidance in Archaeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines (48 FR 44716-44742), the Council's publication, Treatment of Archaeological Properties (1980), and guidance offered by the SHPO. Each HPTP will consider, at a minimum, the following issues:

A. The actions that will be taken to protect and conserve historic properties. These protective measures may include, but should not necessarily be limited to monitoring; capping; fencing; land use policy and planning techniques such as zoning restrictions, and transfer of development rights; and other appropriate measures.

B. The need for data recovery at sites subject to adverse effects. Where data recovery is required at a National Register eligible or listed archaeological site or sites, the HPTP shall include a research design to guide that work. The research design shall take into account the Office of Historic Preservation's (1991) Guidelines for Archaeological Research Designs, and shall specify the types and amounts of analysis that will be conducted, how reports will be prepared and distributed, where recovered materials will be curated, how interested persons will be invited to participate, what efforts will be taken to interpret the results of the investigation(s) to the public, and a schedule for accomplishing the study or studies.

C. Any property, properties, or portions of those properties that will be destroyed or altered without data recovery or other treatment;

D. A schedule for implementation of all the treatment measures defined in the HPTP.

5. REPORT FORMAT AND REVIEW:

The DL shall ensure that all documents prepared to satisfy the terms of this agreement are responsive to contemporary professional standards, the Secretary of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79), and the OHP's Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (December 1989). Archaeological

sites shall be referred to by their permanent trinomial designations in all reports. Precise historic property locational information shall not be placed in documents for public distribution if the release of those data may adversely affect the properties.

A. Unless otherwise agreed to, each document prepared to satisfy the stipulations of this agreement will be submitted by the DL to the cooperating Federal agency, SHPO, Council, and The Reclamation Board for a 30 day review period commencing on the day of its receipt by the reviewing party. If the reviewing parties have no objection to the findings of the document, or if they fail to comment in the allotted time, the DL may assume acceptance of the document and implement subsequent actions required for compliance with this agreement, or, if no further actions are required, the DL may begin construction of the Project or Project component covered by that document.

B. If objections are raised in the review period, the DL shall consult with the objecting party to remove those concerns. If objections cannot be resolved to the satisfaction of all reviewing parties, the DL shall consult the Council pursuant to Stipulation 10. The DL will then ensure that the revised document is implemented in a manner that takes into account the Council's comments.

C. Copies of each accepted final report will be submitted by the DL to the Council, SHPO, The Reclamation Board, cooperating Federal agency, and appropriate Information Center(s) of the California Archaeological Inventory.

6. PARTICIPATION OF INTERESTED PERSONS:

The public shall have an opportunity to comment on the contents and implementation of this agreement pursuant to 36 CFR 800.1(c) (2) (iv), 800.13(c), and 800.14. Following its execution, the DL will distribute copies of this agreement to persons and organizations likely to be interested in the management of cultural resources that may be affected by the Project. Those interested parties should include appropriate Native American individuals and groups, local historical and archaeological societies, agencies that manage cultural resources which may be affected by the Project, preservation groups, and other persons and organizations likely to have an interest in the management of historic properties within the Project's APE. These prospective interested persons shall be given 30 days to comment on the agreement from the time they receive a copy of it.

The DL shall provide copies or a synopsis of the comments it receives to the other parties to this agreement, along with a plan defining how interested members of the public will be given opportunities to comment on the implementation of this agreement. The plan will include provisions for involving the Most Likely

Descendants of Native American groups associated with the Project APE, as identified through consultation. The views of the Descendants will be considered and integrated into planning and conducting any work involving the disturbance of scientific excavation of historic properties associated with Native Americans.

7. CURATION OF RECOVERED DATA:

The DL shall ensure that all materials and records resulting from the implementation of this agreement are curated or otherwise treated in accordance with the Secretary of Interior's Standards and Guidelines, 36 CFR Part 79 and the Archaeological Resources Protection Act (PL 96-95). A curatorial agreement or other provisions for the disposition of recovered data shall be reached between the DL, a specific curatorial facility, and other interested parties prior to the implementation of any subsurface archaeological studies that may be required under the terms of this agreement.

8. PROFESSIONAL QUALIFICATIONS:

All studies conducted under the terms of this agreement will be carried out or directly supervised by appropriately trained persons who meet or exceed the Secretary of the Interior's Professional Qualifications Standards for the particular field of study required in that investigation. The COE and BOR will ensure that they retain staff meeting the aforementioned standards for the purposes of monitoring and implementing the terms of this agreement.

9. REVIEW OF IMPLEMENTATION AND AMENDMENT OF AGREEMENT:

All parties to this agreement shall confer or meet annually on the anniversary of its signing unless it is mutually agreed that this is unnecessary. This annual conference or meeting will be held for the purpose of reviewing implementation of the terms of this agreement and to determine whether revisions of the agreement are needed. If a meeting at the Project site is required, the DL will provide sufficient travel funds to allow for Council participation. The DL will provide an annual report of activities for review by all parties to the agreement at least 30 days prior to the anniversary date. If revisions are needed, the parties to this agreement shall consult in accordance with 36 CFR 800.13 to make such revisions.

Any party to this agreement may also request that it be amended by notifying the other parties, whereupon all of the parties will consult in accordance with 36 CFR 800.13 to consider such revisions. This request may be initiated at any time during the implementation of this agreement.

10. DISPUTES:

Should any of the parties to this agreement object within 30 days to any documents provided for review pursuant to its terms, the DL shall consult with the objecting party(ies) to resolve their

concern. If the DL determines that the objection cannot be resolved, it shall submit documentation relevant to the dispute to the Council with a request for comments pursuant to this stipulation. Any Council comment provided within 30 days of such a request will be taken into account by the DL in accordance with 36 CFR 800.6(c) (2) with reference only to the subject of the dispute. The DL's responsibility to carry out actions unrelated to the dispute will remain unchanged.

11. FAILURE TO CARRY OUT THE TERMS OF THIS AGREEMENT:

If the DL fails to carry out the terms of this agreement, it must comply with 36 CFR 800.4 through 800.6 for the Project or any aspect of the Project that could affect historic properties before taking or sanctioning any action.

12. TERMINATION:

Any party to this agreement may terminate it by providing 30 days written notice to the other parties, provided that the terminating party has consulted with the other parties prior to seeking termination and has sought agreement on amendments or other actions that would avoid termination. In the event of termination, the DL shall comply with 36 CFR 800.4 through 800.6 with regard to implementation of the Project or any aspect of the Project that may affect historic properties.

CONCLUSION

Execution and implementation of this agreement evidences that the COE and BOR have afforded the Council a reasonable opportunity to comment on the management of historic properties affected by the American River Watershed Project and that the COE and the BOR have taken into account the effects of the Project on such properties in compliance with Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR 800).

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Robert O. Bush DATE: 12/13/91
Robert Bush
Executive Director

CORPS OF ENGINEERS, SACRAMENTO DISTRICT

BY: Laurence R. Sadoff DATE: 25 Nov 91
Laurence R. Sadoff, Colonel
District Engineer

BUREAU OF RECLAMATION, MID-PACIFIC REGIONAL OFFICE

BY: Roger K. Patterson DATE: 11/22/91
Roger K. Patterson
Regional Director

CALIFORNIA HISTORIC PRESERVATION OFFICER

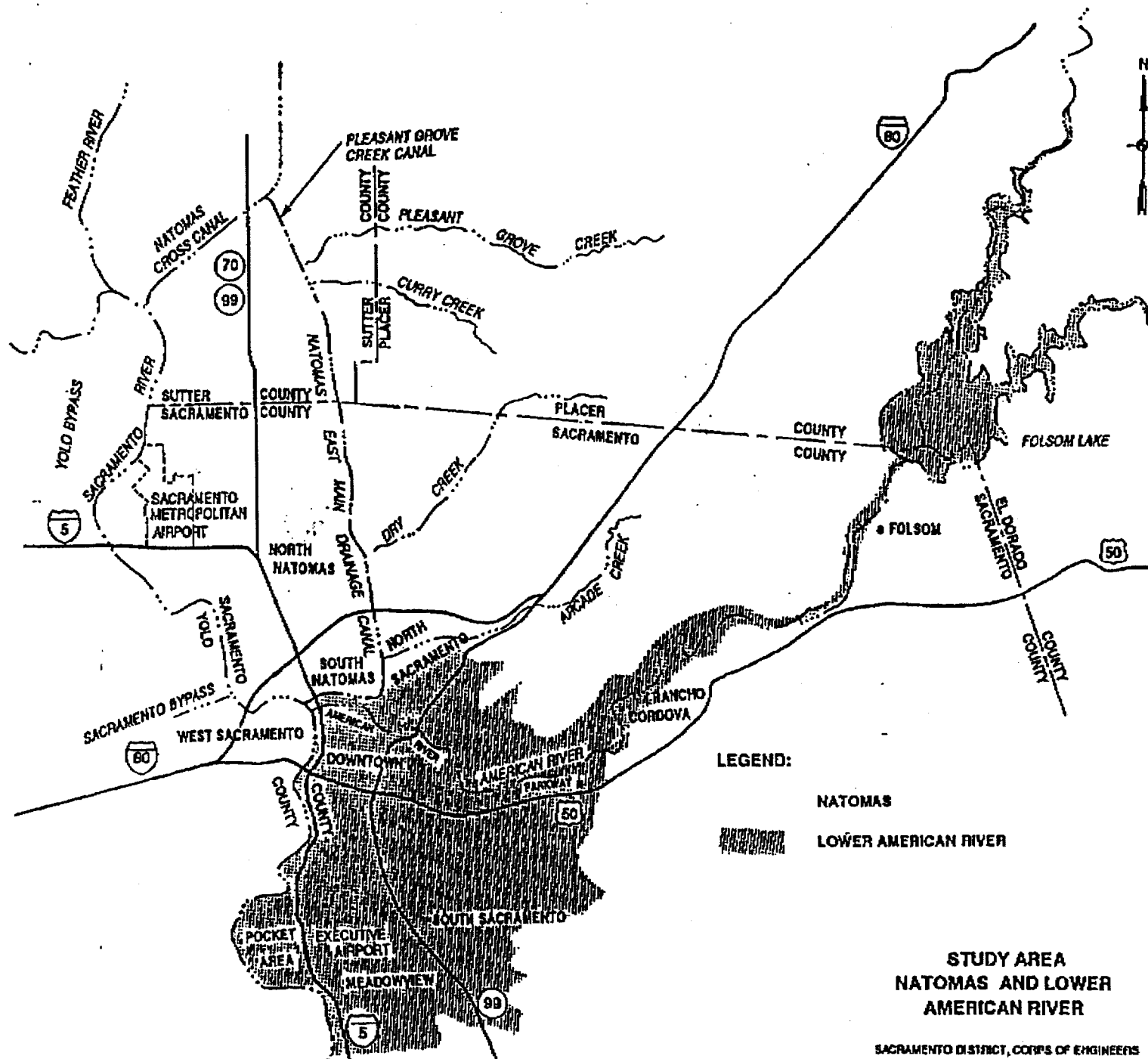
BY: Kathryn Gualtieri DATE: 12/5/91
Kathryn Gualtieri
California State Historic Preservation Officer

THE RECLAMATION BOARD

BY: Rodney H. Mayer DATE: 11/25/91
for Raymond E. Barsch
General Manager

SACRAMENTO AREA FLOOD CONTROL AGENCY

BY: William H. Edgar DATE: 11/25/91
William H. Edgar
Executive Director



STUDY AREA NATOMAS AND LOWER AMERICAN RIVER

SACRAMENTO DISTRICT, CORPS OF ENGINEERS
SACRAMENTO, CALIFORNIA
DECEMBER, 1991